

## Why do I need Professional Liability Insurance?

This information was supplied through Sports & Fitness Insurance of Canada by Jay Trothen of Trothen & McConkey ,825 Richmond St W.London, OntarioN6A 3H7(519) 672-3222 (888)346-6602

Please note in this article we generally refer to Personal Training. Whether an Aquatics Instructor, a Tai Chi Instructor or an Aerobics Instructor and so on, these Professional Liability wordings are interchangeable based on qualifications.

### What is this insurance for?

Every time you train, instruct or consult with any of your clients, there is risk involved. As a professional in your field, you need to practice loss prevention daily by serving the needs of your clients in a safe environment. *You need to protect yourself* by purchasing quality insurance.

### Am I covered under my club's insurance and how do I determine if I need my own insurance?

Fitness professionals often work as employees within the confines of a health club where there is probably coverage already provided by the health club's insurance policy. If you work at one location of a health club as a contract personal trainer you may or may not have insurance depending on their insurance policy. If you work at various locations as a contract personal trainer, you should have your own professional insurance coverage.

### ***But what if personal trainers do any personal training on their own or in a client's home. Are they covered? The answer is NO!***

What defines whether a personal trainer is an employee of a club or working on their own is not only who collects the money, but how much **control** you have over your decisions as to what, where, when and how you teach a course. An employee is a person in the service of an employer, *where the employer has the right to control and direct the employee in how the work is to be performed.* For example, if the club decides that Level 1 Aerobics are to be taught every Monday evening and you are to follow their routine of exercises, most of the control is in their hands. The method of remuneration has little or no bearing in this decision.

***If in doubt, check with the club owner to make sure if you are covered or not.***

On the other hand, an independent contractor is generally a person who is contracted to do a piece of work according to his/her own methods, *where the employer has little or no control as to what you teach, how you teach it and so on.* Independent contractors are **generally not covered** by a club's commercial insurance policy. ***Again, we suggest that you check with the club owner to find out if you are covered.***

Sometimes a club will set up programs that are administered by an independent contractor such as swimming, martial arts or an entire aerobic program. The firm or individual working under the independent contractor are looked upon as subcontractors and again are **not covered** under the club's insurance.

This is getting to be an extremely gray area with club owners as to whether their own club policy covers instructors or not. Most fitness professionals are becoming more like independent contractors and do need to purchase their own liability insurance

### What about signing a waiver?

Each client to whom you provide professional training/group instruction should sign a waiver. This waiver is only a token line of defense. Under the law, individuals can only sign away their right to

seek compensation **under circumstances that are *reasonably foreseeable* at the time of signing the waiver.**

When things go wrong and your client is injured and goes to a lawyer, you will lose most of the protection afforded by the waiver. The lawyer can normally successfully argue that the injury was not foreseeable, and the court will hold you responsible for any injuries to your client.

Most people starting out with a Fitness Professional should begin slowly and build up gradually. Don't push anybody to do more than you feel they are capable of performing. This is the safest and easiest way to go. Another suggestion is to have a medical questionnaire for all of your clients to complete and sign. If you do not have a questionnaire of your own, Health and Welfare Canada have a "Par-Q & You" questionnaire available for you.

We have hired a top Canadian insurance lawyer to develop a specific waiver for adults and minors to help standardize the industry. **On request we will offer this to all of our clients Free of Charge.**

**When and why would a fitness professional need insurance?** As mentioned earlier in this article, if you are an employee for the club and the club is paying you for your services, then you are covered under the fitness club's insurance.

**But**, if you are doing any special programs for a church or a night class for example, and you are being paid directly, then you will need your own liability insurance. Generally in smaller communities, where fitness facilities are set up in locations such as churches, schools or community centers, you would require coverage such as Tenants Legal Liability where any damage due to your negligence is covered. This policy provides this for you.

**Any time that you instruct, are training, or just advising a client, you are liable, as you will be seen as an expert in your field through the eyes of the court.**

Are there any examples of fitness professional liability lawsuits? What is the risk?

A claim in 1996 occurred when a client with an existing disc problem in his back received personal training. The exercises that the fitness professional suggested aggravated this disc problem and resulted in back surgery being required. The fitness professional was sued for a substantial amount and the claim was settled for \$80,000, including \$10,000 medical plus legal fees.

Liability claims can be filed up to 2 years after an injury in Ontario. At this point other Provinces vary to the length of time to file a claim.\*\* This policy provides you this necessary coverage.

This case demonstrates how important it is that a *medical questionnaire* be completed for *all of your clients* to fill out and return. You need to know:

- ✓ Do they have any pre-existing condition such as back problems, heart problems, and/or knee problems?
- ✓ Have each client complete a PAR Q and if any red flags are advised take further steps to help the client complete the MED X regular for or MED X pregnancy.
- ✓ Make sure they talk to their doctor **BEFORE** you start them on a fitness program.
- ✓ Once you realize that they are a beginner or that there is a pre-existing condition, start them off slowly until they become more physically active.
- ✓ You should be assessing your clients on a regular basis, to make sure they are able to increase the amount of exercise.
- ✓ Suggest they take part in a physical appraisal to determine their fitness level. Some people just go gung-ho on exercise and then realize later that they should have been more cautious.

- ✓ **As their professional fitness expert, you may be held responsible for any injuries to your clients.**

**What's covered under this program?** This liability policy provides limits of either \$1,000,000 or \$2,000,000 of protection including professional liability

**Do I automatically qualify for this insurance?**

To be eligible to purchase this insurance you must be Certified in your Profession. You must also be a resident of Canada. You must fully complete and return with payment our operation check list and application form. We must have a copy of your certification sent along with your application.

**How much does this insurance cost & how do I get it?** This policy is set-up on a twelve-month term beginning **on the day the application is received at our office** and continuing for 12 months. Upon receiving your application along with payment and any further information required, you shall be sent a liability certificate showing the Master Policy number along with your certificate number providing you with proof of Professional Liability Insurance.

*Depending on your certification, this certificate will state that you are a "Certified Professional" in your field whether it is as an Aquatic Instructor or Personal Trainer. **In other words, we cannot issue you an Aerobics certificate if you are in possession of an Aquatics Certification. We would need to see proof of both certifications.***

The premium for a 12-month term is \$351.00 for \$2,000,000. Payment options are personal cheque, Master Card or Visa.

**A LAYMAN'S GUIDE TO UNDERSTANDING INSURANCE COVERAGES:**

Here are some explanations of some of the key coverage under this liability policy:

No "Participants Exclusion": Some policies exclude coverage to participants. An exclusion like this, which is common in the fitness industry, would be no good for you, as all of your work involves the participation of your clients, as opposed to a premise exposure such as a slip or fall.

Professional Liability: Most liability policies exclude professional liability coverage. If a court was to deem that your services are professional in nature, a normal liability policy might not provide this coverage. This policy is amended to provide both normal liability insurance and professional liability insurance pertaining to personal training and fitness instructing.

Incidental Malpractice: Provides coverage if you cause additional injury to someone as a result of applying first aid. **This is very important if for example a client suffers a heart attack as a result of you applying first aid incorrectly.**

Cross Liability: Applies primarily when you work with public institutions such as municipalities or school boards. If the particular institution wishes to be added to your insurance policy, (which we will do. There is a \$25 fee), they are still able to sue you even though they are listed as an insured. Normally under insurance, you are not able to sue the named insured (yourself). Cross liability allows a second named insured to be covered under your policy allowing them the same protection that this policy provides for you as well as the right to make a claim against you if you are responsible for causing damage.

All Risk Tenants Legal Liability: Normally applies to damage to leased premises that you may rent or occupy, which has been caused by your negligence. The coverage under this program is \$250,000. An example – your weights falling and causing damage to the floor of a church.

Medical Payments – per person/per incident: If you need to call medical help, this pays for up to \$25,000 per person of medical expenses such as ambulance. An example would be an air ambulance if you were providing personal training to a ski resort.

Intended Bodily Injury: A deliberate act of force used against someone else is not insured against, unless the deliberate act of force was used while you are trying to protect someone else or your property.

Sexual Abuse/Sexual Harassment: This protects the Personal Trainer for Liability and will pay all defense costs against any accusation of sexual abuse and/or sexual harassment.

### **Personal Injury Liability**

Discrimination: This protects the Personal Trainer against any claims of discrimination made by another person by reason of age, sex, religion or national or racial origin, but only with respect to the injury to the feelings or reputation of a natural person arising out of such discrimination.

Libel/Slander/Defamation of Character: This protects the Personal Trainer for liability and will pay all defense costs against the accusations of publication or utterance of a libel or slander or of other defamatory or disparaging material against another person.

False Arrest: This protects the Personal Trainer for liability and will pay all defense costs against accusations of false arrest, detention or imprisonment and malicious prosecution.

Invasion of Privacy: This protects the Personal Trainer for liability and will pay all defense costs against accusation of wrongful entry or eviction, or other invasion of the right of private occupation.

Advertising Injury: This coverage applies to “personal injury” caused by an offence arising out of your advertising, publishing, broadcasting or telecasting done by or for you.

**Our policy provides insurance coverage in Canada only. Any operations in U.S.A should contact Sports & Fitness in the states.**

**In the U.S.A. Special Instructor Insurance can be obtained from:**

Sports & Fitness Insurance Corporation (601) 898-8464 or 1(800) 844-0536 Madison, MS



**TRAINER ELIGIBILITY CHECKLIST**

This checklist is to be used as a guideline. It will help to make sure that you have enclosed the proper information in order to issue the policy, as well as provide insight as to whether or not this policy will provide sufficient coverage.

*Please answer the following questions:*

- Do you have employees? **Yes**  **No**
- Are you doing any work in the USA? **Yes**  **No**
- Are you working with children under 12 years? **Yes**  **No**
- Do you have any equipment that may require coverage? **Yes**  **No**
- Do you own/lease any property from which you're working? **Yes**  **No**
- Do you have any clients coming into your home? **Yes**  **No**
- Are you working with any rehabilitation patients? **Yes**  **No**
- Are you counseling clients in diet/weight management, other than outlined in the Canadian Food Guide? **Yes**  **No**
- Are you working with any Professional Athletes? **Yes**  **No**
- Have you had any prior claims? **Yes**  **No**
- Did you obtain your certification by correspondence? **Yes**  **No**

**Coverages**

Comprehensive Liability  
*Provides premises/operation protection for any claims arising from your fitness related activities including sexual harassment.*

Professional Liability  
*Protects you against bodily injury arising out of rendering or failure to render professional services.*

Personal Injury Liability  
*Protects you against suits involving libel, slander, wrongful invasion of privacy, etc.*

Premises Liability  
*Provides \$250,000 of tenant's legal liability protection for any claims arising from facilities you rent, lease, or occupy.*

**Peace of Mind**

EXCLUSIVELY DISTRIBUTED BY  
**Trothen & McConkey**  
 INSURANCE BROKERS LIMITED

**TRAINER INFORMATION**

Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_  
 Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Home:( ) \_\_\_\_\_ Work:( ) \_\_\_\_\_

**Certified Through (Check One):**  
 CANFIT  ACE  OFC  CPTN  
 CALA  BCRPA  AFAA  ACSM  
 NFLAC  OASES  IDEA  CCAA  
 WATER ART  YMCA/YWCA  
 Any other: \_\_\_\_\_  
**YOU MUST REMIT A COPY OF YOUR CERTIFICATION IN ORDER TO RECEIVE THIS COVERAGE.**

**Limit Desired (Check One):**

	Limit	Deductible	Annual Premium
A. <input type="checkbox"/>	\$1,000,000	\$0	270.00
B. <input type="checkbox"/>	\$2,000,000	\$0	297.00
C. <input type="checkbox"/>	\$2,000,000	\$0	351.00

**Option C is the only coverage for Pilates / Yoga Nutrition & Wellness / Pre & Post Natal / Tennis Instructor / WMC / SFIC / CCAA**

All applicable taxes included.

**Premium is fully earned - No cancellations**

Amount Remitted: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 VISA  MasterCard  
 Cardholder Name: \_\_\_\_\_  
 Card Number: \_\_\_\_\_  
 Expiration Date: \_\_\_\_\_

OR

Please attach a check or money order payable to

**Trothen & McConkey**  
 Upon receipt of application and annual premium, Coverage will be bound and a certificate sent to you.

1054 Adelaide Street N. London, Ontario, N5Y 2N1  
 1-888-346-6602 519-672-3222 Fax: 519-439-8865

